



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

January 24, 2005

Ms. Mimi Drew, Director
Division of Water Resource Management
Florida Department of Environmental Protection
Twin Towers Office Building
Mail Station 3500
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Dear Ms. Drew:

The United States Environmental Protection Agency (USEPA) has completed its review, as documented in the enclosed, *USEPA Determination under section 303 of the Clean Water Act*, of certain provisions of Florida Administrative Code (FAC) 62-302.540, entitled "Water Quality Standards for Phosphorus Within the Everglades Protection Area" (Phosphorus Rule or Rule). These provisions were submitted to USEPA by letter dated January 12, 2005, from Gregory M. Munson, General Counsel of Florida Department of Environmental Protection (FDEP), to J. I. Palmer, Jr., Regional Administrator, USEPA Region 4, requesting USEPA's review under the authorities of section 303(c) of the Clean Water Act (CWA or the Act). Attached to the January 12, 2005 letter was a document entitled "Technical and Regulatory Information in Support of the State of Florida's Adopted Phosphorus Criterion Contained in Rule 62-302.540, F.A.C. (FDEP Technical Support Document), which provides additional information regarding the Rule.

Based on the State's submittal, USEPA's review of the Phosphorus Rule as a revision to Florida's Water Quality Standards was limited to Subsections (3), (4), (6) and (7). Specifically, Paragraph (4)(a) of FAC 62-302.540 is an adoption of a numeric water quality criterion of 10 parts per billion (ppb) for phosphorus for Class III waters in the EPA, and as such is a criterion adopted to protect a designated use that is reviewed by USEPA under the requirements of 40 CFR § 131.11. The remaining Paragraphs (4)(b) through (f) address how achievement of criterion shall be determined, adjustment of achievement methods, and data screening. These Paragraphs are general policies that affect the application and implementation of standards that states may, at their discretion, include within their water quality standards and submit for USEPA review under the provisions of 40 CFR § 131.13. USEPA's review of these general policies is based on consistency with section 303(c) of the CWA and meeting the substantive and relevant requirements of its implementing regulations at 40 CFR Part 131 as a whole. The water quality criterion as well as these policies and procedures must, together, assure the designated use of the water body, as a whole, is protected.

Based on USEPA's review of the submitted Phosphorus Rule, and supporting information provided by FDEP, it is USEPA's conclusion that, with the exception of

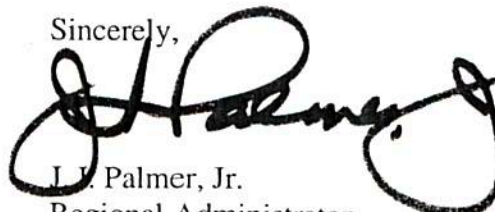
Subparagraph (4)(c)(1), the requirements of the Clean Water Act and provisions of 40 CFR Part 131 have been met. USEPA is approving Paragraph (4)(a) as a change in state water quality standards under section 303(c) and 40 CFR § 131.11. USEPA is also approving Paragraphs (4)(b), the remainder of (4)(c), (4)(d), (4)(e), (4)(f), and Subsections (3), (6) and (7), as general policies. USEPA is not approving Subparagraph (4)(c)(1) because, as discussed in the attached Determination, it limits applicability of the phosphorus criterion to certain portions of the Loxahatchee Wildlife Refuge and thus USEPA is not able to conclude that it is protective of the designated use of the entire Refuge.

The action USEPA is taking on the Rule is consistent with our consultation obligations under the Endangered Species Act. On January 20, 2005, USEPA initiated section 7 consultation under the Endangered Species Act with the U.S. Fish and Wildlife Service (the Service) on EPA's review of FAC 62-302.540. USEPA has determined that the provisions of FAC 62-302.540 that are being approved today are not likely to adversely affect listed species or result in the adverse modification of designated critical habitat of such species, and has requested that the Service concur with that determination. USEPA will notify FDEP of the results of the section 7 consultation upon its completion.

I want to congratulate both FDEP and others in the State for the development of these water quality standards. These standards will provide an important contribution to protection and recovery efforts in the Everglades. Progress toward CWA standards attainment is critical to recover, restore and protect the Everglades. These standards provide important benchmarks to state, tribal, local and federal governments, watershed councils and citizens as communities move forward on watershed recovery efforts.

I would like to extend my deep appreciation to you and your staff for FDEP's exceptional efforts and commitment to work with my staff concerning this matter. If you have any questions concerning this letter please contact me at (404) 562-5700 or Jim Giattina, Water Management Division Director, at (404) 562- 9345

Sincerely,



J. V. Palmer, Jr.
Regional Administrator

Enclosure

cc: Gregory M. Munson, FDEP